

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,**

**MICHAEL V. BLACK,
Bar No. 007671**

Respondent.

PDJ 2022-9069

FINAL JUDGMENT AND ORDER

(State Bar No. 21-2573)

FILED FEBRUARY 2, 2023

The Presiding Disciplinary Judge accepted the parties' Agreement for Discipline by Consent submitted pursuant to Rule 57(a), Ariz. R. Sup. Ct.

IT IS THEREFORE ORDERED suspending Michael V. Black, Bar No. 007671, from the practice of law in Arizona for six months, effective 30 days from the date of this order, for his conduct in violation of the Arizona Rules of Professional Conduct.

IT IS FURTHER ORDERED that Respondent pay restitution to Guangping (Steven) Hu in the amount of \$10,000.00 within 90 days. This sum is subject to the statutory interest rate of 4.25% per annum.

IT IS FURTHER ORDERED that Respondent comply with the requirements relating to notification of clients and others and provide and/or file all notices and affidavits required by Rule 72, Ariz. R. Sup. Ct.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$1,200.00 within 30 days. There are no costs or expenses incurred by the Office of the Presiding Disciplinary Judge in these proceedings.

DATED this 2nd day of February, 2023.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing e-mailed
this 2nd day of February, 2023, to:

Michael V. Black
3219 E. Camelback Road, #446
Phoenix, AZ 85018
Email: mike@michaelvblack.com

Kelly J. Flood
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: LRO@staff.azbar.org

by: SHunt

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER OF THE
STATE BAR OF ARIZONA,**

**MICHAEL V. BLACK,
Bar No. 007671**

Respondent.

PDJ 2022-9069

**DECISION ACCEPTING
AGREEMENT FOR DISCIPLINE
BY CONSENT**

(State Bar No. 21-2573)

FILED FEBRUARY 2, 2023

On January 31, 2023, the parties filed an Agreement for Discipline by Consent ("Agreement") pursuant to Rule 57(a), Ariz. R. Sup. Ct. The State Bar of Arizona is represented by Kelly J. Flood. Respondent Michael V. Black is self-represented.

Contingent on approval of the proposed form of discipline, Mr. Black has voluntarily waived his right to an adjudicatory hearing, as well as all motions, defenses, objections, or requests that could be asserted. As required by Rule 53(b)(3), Ariz. R. Sup. Ct., notice of the Agreement was sent to the complainant, who advised that he will not object to the terms of this Agreement.

The Agreement details a factual basis in support of Mr. Black's conditional admissions and is incorporated by reference. *See* Rule 57(a)(4), Ariz. R. Sup. Ct. Mr. Black conditionally admits violating Rule 42, Ariz. R. Sup. Ct., ER 1.5 (fees), ER 1.15 (safekeeping property) and ER 1.16(d) (termination of representation). The State Bar conditionally agrees to dismiss alleged violations of ER 1.3 (diligence) and ER 1.4

(communication). As a sanction, the parties agree to a six-month suspension, payment of restitution, and payment of costs to the State Bar.

The underlying facts are set forth in the Agreement. Mr. Black represented a client who later terminated his services. Although he agreed that the client was entitled to a refund of unearned fees, he made no attempt to reimburse the client. Mr. Black has prior discipline for similar conduct.

The parties agree that Mr. Black knowingly violated duties owed to his client and the profession, causing actual harm. Suspension is the presumptive sanction under the American Bar Association's *Standards for Imposing Lawyer Sanctions* (Standards). Specifically, Standard 4.12 states that suspension is generally appropriate when a lawyer: knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client.

Five aggravating factors are present: (1) prior disciplinary offenses (including a prior sanction and probation for conduct similar in nature); (2) dishonest or selfish motive; (3) a pattern of misconduct; (4) substantial experience in the practice of law; and (5) indifference to making restitution. The only mitigating factor is Mr. Black's good reputation as a criminal defense attorney. Because of the numerous aggravating factors, the PDJ concurs that a six-month suspension is appropriate.

IT IS ORDERED accepting the Agreement for Discipline by Consent. A final judgment and order is filed this date.

DATED this 2nd day of February, 2023.

Margaret H. Downie
Margaret H. Downie
Presiding Disciplinary Judge

Copy of the foregoing e-mailed
this 2nd day of February, 2023, to:

Michael V. Black
3219 E. Camelback Road, #446
Phoenix, AZ 85018
Email: mike@michaelvblack.com

Kelly J. Flood
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, AZ 85016-6266
Email: LRO@staff.azbar.org

by: SHunt

Kelly J. Flood, Bar No. 019772
Staff Bar Counsel
State Bar of Arizona
4201 N. 24th Street, Suite 100
Phoenix, Arizona 85016-6266
Telephone (602)340-7272
Email: LRO@staff.azbar.org

Michael V. Black, Bar No. 007671
3219 E Camelback Rd Unit 446
Phoenix, AZ 85018-2346
Telephone 602-430-3094
Email: mike@michaelvblack.com
Respondent

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

MICHAEL V. BLACK
Bar No. 007671

Respondent.

PDJ 2022-9069

State Bar File No. **21-2573**

**AGREEMENT FOR DISCIPLINE
BY CONSENT**

The State Bar of Arizona, and Respondent Michael V. Black who has chosen not to seek the assistance of counsel, hereby submit their Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct. A probable cause order was entered on September 15, 2022. A formal complaint was filed

September 19, 2022. Respondent voluntarily waives the right to an adjudicatory hearing, unless otherwise ordered, and waives all motions, defenses, objections or requests which have been made or raised, or could be asserted thereafter, if the conditional admission and proposed form of discipline is approved.

Pursuant to Rule 53(b)(3), Ariz. R. Sup. Ct., notice of this agreement was provided to the complainant by email on January 4, 2023. Complainant has communicated that he will not object to the terms of this agreement.

Respondent conditionally admits that his conduct, as set forth below, violated Rule 42, ER 1.5, ER 1.15, and ER 1.16(d). Upon acceptance of this agreement, Respondent agrees to accept imposition of the following discipline: **six (6) months Suspension, and an Order of Restitution to pay Complainant Guangping (Steven) Hu \$10,000.** Respondent also agrees to pay the costs and expenses of the disciplinary proceeding, within 30 days from the date of this order. If costs are not paid within the 30 days interest will begin to accrue at the legal rate.¹ The State Bar's Statement of Costs and Expenses is attached hereto as Exhibit A.

¹ Respondent understands that the costs and expenses of the disciplinary proceeding include the costs and expenses of the State Bar of Arizona, the

FACTS

GENERAL ALLEGATIONS

1. Respondent was licensed to practice law in Arizona on May 14, 1983.

COUNT ONE (File no. 21-2573/Hu)

2. On June 24, 2017, Guangping (Steven) Hu retained Respondent. The scope was listed at the time as:

REPRESENTATION OF: Client in a matter under investigation by the U.S. Department of Homeland Security, District of Arizona, Phoenix, AZ.

3. The fee for the matter was set forth as:

1. FEE FOR INVESTIGATORY AND TRIAL LEVEL REPRESENTATION: The Attorney's fee for handling this matter during the investigatory/grand jury stage is a flat fee in the amount of \$15,000. Attorney acknowledges receipt of \$7,500 with the balance due in 30 days. Client understands that the fee is paid solely for the retention of Attorney's services, is earned upon receipt and is non-refundable. Even though the non-refundable fee is earned upon receipt, Client is entitled to terminate Attorney's services and may be entitled to a refund of all or part of the fee based upon the value of representation.

Should the Client be charged by way of complaint or indictment, Client agrees that a separate fee agreement will be negotiated. In that event, Attorney agrees to deduct from any future agreement the amount paid pursuant to this agreement.

Disciplinary Clerk, the Probable Cause Committee, the Presiding Disciplinary Judge and the Supreme Court of Arizona.

4. On November 22, 2019, the US Attorney sent Mr. Hu a "target letter," based on a multi-year investigation regarding trafficking of counterfeit laptop batteries.

5. Mr. Hu met with Respondent at his office on December 1, 2019 to discuss the target letter, and entered into a second fee agreement, pursuant to which Mr. Hu paid another \$10,000. The scope and rates for the second fee agreement were as follows:

REPRESENTATION OF: Client in the matter of Federal Violations: Trafficking In counterfeit Goods, Conspiracy, and Wire Fraud in United States District Court, Phoenix, AZ.

1. **FEE FOR TRIAL LEVEL REPRESENTATION:** The Attorney's fee for handling this matter up to commencement of trial is a retainer fee in the amount of \$25,000. Attorney acknowledges receipt of \$10,000.00 - in addition to what was previously paid. Client understands that the fee is paid solely for the retention of Attorney's services, is earned upon receipt, and is non-refundable. Even though the non-refundable fee is earned upon receipt, Client is entitled to terminate Attorney's services and may be entitled to a refund of all or part of the fee based upon the value of representation.

6. On February 25, 2020, Mr. Hu and Respondent met in person to discuss a possible plea agreement. Mr. Hu then did not hear from Respondent until October 7, 2021. In the interim, there were no activities in the case.

7. Mr. Hu had a court date set for October 20, 2021, but Respondent texted Mr. Hu to tell him that he would be out of town until or on that date. Mr.

Hu was worried about having representation, so he terminated Respondent's representation on October 15, 2021.

8. Mr. Hu asked for a refund of unused/unearned fees, and asserted that Respondent had earned \$5,000 of the \$25,000 he had paid to date. Mr. Hu therefore asked for \$20,000 to be returned. Respondent suggested to Mr. Hu that a refund of \$7,500 would be appropriate, but that it would take him 7-8 months to pay it. Mr. Hu rejected this suggestion.

9. Respondent confirmed that he offered Mr. Hu a refund of \$7,500 after performing a retrospective analysis of the work performed balanced against his level of experience and the issues presented in the matter, but he has not refunded this or any amount because Mr. Hu declined to accept his offer.

CONDITIONAL ADMISSIONS

Respondent's admissions are being tendered in exchange for the form of discipline stated below and are submitted freely and voluntarily and not as a result of coercion or intimidation. Respondent conditionally admits that he violated Rule 42, Ariz. R. Sup. Ct., specifically ER 1.5, ER 1.15, and ER 1.16(d).

CONDITIONAL DISMISSALS

The Bar is conditionally dismissing allegations regarding ERs 1.3 and 1.4.

RESTITUTION

Respondent agrees to pay Restitution in the amount of \$10,000.00 to Mr. Guangping (Steven) Hu within thirty (90) days of entry of the final judgment and order.

SANCTION

Respondent and the State Bar of Arizona agree that based on the facts and circumstances of this matter, as set forth above, the following sanctions are appropriate: **Suspension of six (6) months.**

If Respondent violates any of the terms of this agreement, the State Bar may bring further discipline proceedings.

LEGAL GROUNDS IN SUPPORT OF SANCTION

In determining an appropriate sanction, the parties consulted the American Bar Association's *Standards for Imposing Lawyer Sanctions (Standards)* pursuant to Rule 57(a)(2)(E). The *Standards* are designed to promote consistency in the imposition of sanctions by identifying relevant factors that courts should consider and then applying those factors to situations where lawyers have engaged in

various types of misconduct. *Standard 1.3, In re Pappas*, 159 Ariz. 516, 768 P.2d 1161 (1988). The *Standards* provide guidance with respect to an appropriate sanction in this matter.

In determining an appropriate sanction, the Court considers the duty violated, the lawyer's mental state, the actual or potential injury caused by the misconduct and the existence of aggravating and mitigating factors. *Standard 3.0*.

The parties agree that the following *Standard 4.1 Failure to Preserve the Client's Property* is the appropriate *Standard* given the facts and circumstances of this matter: *Standard 4.12* provides that Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to a client. Here, Respondent knowingly retained unearned fees after the client terminated the representation, and made no effort to repay the client any amount.

The duty violated

Respondent's conduct violated his duty to the client and the profession.

The lawyer's mental state

Respondent knowingly was in violation of the Rules of Professional Conduct.

The extent of the actual or potential injury

There was actual harm to the client and the profession.

Aggravating and mitigating circumstances

The presumptive sanction is Suspension. The parties conditionally agree that the following aggravating and mitigating factors should be considered:

In aggravation:

- a) 9.22(a) prior disciplinary offenses: In PDJ2021-9037 (20-1372), Respondent received a Reprimand, Probation, and Order of Restitution for \$15,116.00 for violations of ERs 1.5, 1.15, and 1.16. Additionally, in File 16-3605 Respondent received an admonition for violations of ERs 3.4(c), 8.4(d), and Rule 54(c);
- b) 9.22(b) Dishonest or selfish motive: Respondent has acknowledged owing a refund but has not paid it;
- c) 9.22(c) a pattern of misconduct: The facts in the PDJ 2021-9037 were quite similar in that Respondent retained unearned fees for a substantial period of time. Further, Respondent was on probation in that matter when his representation of Mr. Hu was terminated and he retained unearned fees. Additionally, in another matter (SB No. 20-1326), Respondent agreed to

participate in State Bar Fee Arbitration to address the client and payors' claims that he retained unearned fees. On June 30, 2022, an arbitration award was issued against Respondent which ordered him to pay \$15,000 in unearned fees he had collected from the client in 2017. (Respondent filed a notice of appeal from the arbitration award on September 29, 2022. The appeal is currently pending.):

- d) 9.22(i) substantial experience in the practice of law: Respondent was admitted in Arizona in 1983; and
- e) 9.22(j) indifference to making restitution: Respondent has acknowledged owing a refund of unearned fees but has not paid in any amount.

In mitigation:

- a) 9.32(g) character or reputation: Respondent has a reputation in the community as a very good criminal defense attorney.

Discussion

The parties conditionally agree that upon application of the aggravating and mitigating factors the presumptive sanction is appropriate.

Based on the *Standards* and in light of the facts and circumstances of this matter, the parties conditionally agree that the sanction set forth above is within the range of appropriate sanction and will serve the purposes of lawyer discipline.

CONCLUSION

The object of lawyer discipline is not to punish the lawyer, but to protect the public, the profession and the administration of justice. In re *Peasley*, 208 Ariz. 27 (2004). Recognizing that determination of the appropriate sanction is the prerogative of the Presiding Disciplinary Judge, the State Bar and Respondent believe that the objectives of discipline will be met by the imposition of the proposed sanction of Suspension and the imposition of costs and expenses. A proposed form of order is attached hereto as Exhibit B.

DATED this 31st day of January 2023.

STATE BAR OF ARIZONA

/s/Kelly J. Flood _____

Kelly J. Flood
Staff Bar Counsel

This agreement, with conditional admissions, is submitted freely and voluntarily and not under coercion or intimidation. I acknowledge my duty under the Rules of the Supreme Court with respect to discipline and reinstatement. I understand these duties may include notification of clients, return of property and other rules pertaining to suspension.

DATED this 30th day of January, 2023.

A handwritten signature in black ink, appearing to read "Michael V. Black", written over a horizontal line.

Michael V. Black
Respondent

Approved as to form and content

/s/Maret Vessella
Maret Vessella
Chief Bar Counsel

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona

this 31st day of January, 2023.

Copy of the foregoing emailed this 31st day
of January, 2023, to:

The Honorable Margaret H. Downie
Presiding Disciplinary Judge
Supreme Court of Arizona
1501 West Washington Street, Suite 102
Phoenix, Arizona 85007
E-mail: officepdj@courts.az.gov

Copy of the foregoing emailed
this 31st day of January, 2023, to:

Michael V. Black JD
3219 E Camelback Rd Unit 446 Phoenix,
AZ 85018-2346
Email: mike@michaelvblack.com
Respondent

Copy of the foregoing hand-delivered this
31st day of January, 2023, to:

Lawyer Regulation Records Manager State
Bar of Arizona
4201 N. 24th St., Suite 100
Phoenix, Arizona 85016-6266

by: /s/Jennifer A. Smith
KJF/js

EXHIBIT A

Statement of Costs and Expenses

In the Matter of a Member of
The State Bar of Arizona, Michael V. Black
Bar No. 007671, Respondent.

File No. 21-2573

Administrative Expenses

The Supreme Court of Arizona has adopted a schedule of administrative expenses to be assessed in lawyer discipline. If the number of charges/complainants exceeds five, the assessment for the general administrative expenses shall increase by 20% for each additional charge/complainant where a violation is admitted or proven.

Factors considered in the administrative expense are time expended by staff bar counsel, paralegal, secretaries, typists, file clerks and messenger; and normal postage charges, telephone costs, office supplies and all similar factors generally attributed to office overhead. As a matter of course, administrative costs will increase based on the length of time it takes a matter to proceed through the adjudication process.

***General Administrative Expenses
for above-numbered proceedings***

\$ 1,200.00

Additional costs incurred by the State Bar of Arizona in the processing of this disciplinary matter, and not included in administrative expenses, are itemized below.

Additional Costs

Total for additional costs \$ 0.00

TOTAL COSTS AND EXPENSES INCURRED **\$ 1,200.00**

EXHIBIT B

BEFORE THE PRESIDING DISCIPLINARY JUDGE

**IN THE MATTER OF A MEMBER
OF THE STATE BAR OF ARIZONA,**

MICHAEL V. BLACK,
Bar No. 007671,

PDJ 2022-9069

**FINAL JUDGMENT AND
ORDER**

State Bar No. 21-2573

The Presiding Disciplinary Judge of the Supreme Court of Arizona, having reviewed the Agreement for Discipline by Consent pursuant to Rule 57(a), Ariz. R. Sup. Ct., accepts the parties' proposed agreement.

Accordingly:

IT IS ORDERED that Respondent, **Michael V. Black**, is Suspended for six (6) months for his conduct in violation of the Arizona Rules of Professional Conduct, as outlined in the consent documents, effective 30 days from the date of this order.

IT IS FURTHER ORDERED that Respondent shall pay restitution in the amount of \$10,000 to Guangping (Steven) Hu within 90 days of the service of this

order. The sum of \$10,000 is subject to the statutory interest rate of 4.25% per annum. A.R.S. § 44-1201(B).

IT IS FURTHER ORDERED that, upon reinstatement, Respondent shall be subject to any terms of probation imposed as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that Respondent shall be subject to any additional terms imposed by the Presiding Disciplinary Judge as a result of reinstatement hearings held.

IT IS FURTHER ORDERED that, pursuant to Rule 72 Ariz. R. Sup. Ct., Respondent shall immediately comply with the requirements relating to notification of clients and others.

IT IS FURTHER ORDERED that Respondent pay the costs and expenses of the State Bar of Arizona in the amount of \$ 1,200.00, within 30 days from the date of service of this Order.

IT IS FURTHER ORDERED that Respondent shall pay the costs and expenses incurred by the disciplinary clerk and/or Presiding Disciplinary Judge's Office in connection with these disciplinary proceedings in the amount of _____, within 30 days from the date of service of this Order.

DATED this _____ day of January, 2023.

**Margaret H. Downie, Presiding Disciplinary
Judge**

Original filed with the Disciplinary Clerk of
the Office of the Presiding Disciplinary Judge
of the Supreme Court of Arizona
this _____ day of January, 2023.

Copies of the foregoing mailed/mailed
this _____ day of January, 2023, to:

Michael V. Black
3219 E Camelback Rd Unit 446
Phoenix, AZ 85018-2346
Email: mike@michaelvblack.com
Respondent

Copy of the foregoing emailed/hand-delivered
this ____ day of January, 2023, to:

Kelly J Flood
Staff Bar Counsel
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4201 N 24th Street, Suite 100
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Lawyer Regulation Records Manager
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by:_____